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pay a certain sum to third persons were not expressly bound by the condition since they had not sealed the deed, yet, having accepted it, they were bound by an implied promise to pay the sum, for which an assumpsit would lie.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 157.* 4 Va.-W. Va. Enc. Dig. 439, et seq.]

4. Novation (§ 4*)—Effect.—The parties being the same, the giving and acceptance of a bond for the payment of money due by simple contract extinguishes the simple contract liability.

[Ed. Note.—For other cases, see Novation, Cent. Dig. § 4; Dec. Dig. § 4.* 9 Va.-W. Va. Enc. Dig. 497.]

5. Appeal and Error (§ 1056*)—Exclusion of Evidence—Harmless Error.—Where a deed contained a condition that the grantees should pay a certain sum to third persons, and such third persons discharged the condition by accepting the bonds of the grantees, and an action was brought on the bonds, the refusal of evidence offered by the grantees, that in the bond transaction there was nothing said in regard to the effect it should have on the rights and liabilities under the deed, if error, was not prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187-4193; Dec. Dig. § 1056.* 1 Va.-W. Va. Enc. Dig. 581, et seq., 595.]

6. Appeal and Error (§ 1050*)—Evidence—Grounds for Reversal.—The erroneous admission of evidence which cannot prejudice the party complaining is not ground for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4153-4160; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592, et seq.]

7. Appeal and Error (§ 1068*)—Instructions—Prejudicial Error.—Where the jury could not have found any other verdict than that rendered, error in giving or refusing instructions is not ground for reversal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4227; Dec. Dig. § 1068.* 1 Va.-W. Va. Enc. Dig. 600, et seq.]

Appeal from Circuit Court, Tazewell County.

Action by Crockett's administrator against W. A. Barnes and others. Judgment for plaintiff, and defendants bring error. Affirmed.

BACHRACH *v.* BACHRACH.

Sept. 15, 1910.

[68 S. E. 985.]

1. Mortgages (§ 37*)—Absolute Deed as Mortgage—Oral Evidence—Admissibility.—A deed absolute on its face may be shown

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

by oral evidence that it was intended as a mortgage, and such evidence is not restricted to cases of fraud, accident, or mistake.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 97-107; Dec. Dig. § 37.* 10 Va.-W. Va. Enc. Dig. 35.]

2. Mortgages (§ 36*)—Absolute Deed as Mortgage—Evidence—Sufficiency.—The presumption is that a deed absolute on its face is what it purports to be, and, while oral evidence is admissible to show that it is a mortgage, it must be clear and convincing.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 95, 96; Dec. Dig. § 36.* 10 Va.-W. Va. Enc. Dig. 36.]

3. Mortgages (§ 32*)—Absolute Deed as Mortgage.—Whether a deed is to be regarded as a mortgage depends upon the circumstances under which it was made, the relations, and negotiations between the parties.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 60-66, 84-94; Dec. Dig. § 32.* 10 Va.-W. Va. Enc. Dig. 31, et seq.]

4. Mortgages (§ 38*)—Absolute Deed as Mortgage—Evidence.—The evidence held to show that a deed absolute on its face was in reality a mortgage.

[Ed. Note.—For other cases, see Mortgages, Dec. Dig. § 38.* 10 Va.-W. Va. Enc. Dig. 35, et seq.]

Appeal from Circuit Court, Roanoke County.

Suit by Ida Bachrach against Isaac Bachrach. Decree for complainant, and respondent appeals. Affirmed.

BECKER *v.* JOHNSON.

Sept. 15, 1910.

[68 S. E. 986.]

1. Equity (§ 447*)—Bill of Review—Requisites.—After dismissal of a suit to avoid a sale of stock for false representations, the court should have allowed plaintiff to file a bill of review, based on newly discovered evidence, the bill being verified and accompanied by an affidavit as to the false representations, and it appearing that plaintiff had unsuccessfully tried to obtain such evidence for the trial from the affiant.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1091, 1094; Dec. Dig. § 447.* 2 Va.-W. Va. Enc. Dig. 386.]

2. Equity (§ 447*)—Bill of Review—Newly Discovered Evidence.—In a suit to declare a sale of stock void for false representations that a certain person had bought some of the stock and had paid a certain price for it, plaintiff's request to such person to testify as to whether he had made such purchase was the use of such reasonable

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